IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2432/2006 to 2448/2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
SHANTILAL CHANDUBHAI PATEL & 1 - Defendant(s)

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Appearance :

FA NOS.2432/06 TO 2440/06
MR SS SHAH GP for appellant
MR JAY AMIN for respondent (s)-Claimant(s).
FA NOS.2441/06 TO 2448/06
MR SS PATEL AGP for appellant.
MR JAY AMIN for respondent (s)-Claimant(s).

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/08/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing the above numbered appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant i.e. the Special Land Acquisition Officer, Narmada Project, Dabhoi, has challenged the legality of common judgment and award dated March 6, 2004, renderedby the 8th Joint Civil Judge (S.D.), Vadodara, in Land Reference Case No.1133/99 to Land Reference Case No.1149/99, by which the claimants have been awarded additional compensation at the rate of Rs.20.25 paise per square meter over and above the compensation awarded to them by the Special Land Acquisition Officer, at the rate of Rs.3.75 paise per square meter for their acquired land.

2. A proposal was received by the State Government to acquire the lands of village Vemar, Tal. Karjan, Dist : Vadodara, for the public purpose of Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Vemar were likely to be needed for the said public purpose.

Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on January 13,1996. The owners of the land were served with notices under Section 4 of the Act. They objected to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5 (A) (2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Vemar which were specified in the notification published under Section 4 (1) of the Act were needed for public purpose of Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on November 24, 1997. The interested persons were thereafter served with notices for determination of compensation payable to them. The interested persons appeared before the Special Land Acquisiion Officer and claimed compensation at the rate of Rs.50/- per square meter. However,

having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated April 25, 1998, offered compensation to the claimants at the rate of Rs.3.75 paise per square meter for irrigated lands and Rs.2.50 paise per square meter for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, references were made to the District Court, Vadodara, which were registered as Land Reference Case No.1133/99 to 1149/99.

3. On behalf of the claimants,witness Vinodbhai Leelabhai Patel, who was claimant of Land Reference Case No.1134/99 was examined at Exh.14. Over and above stating that the lands acquired were highly fertile and that each claimant was earning substantial income from the

sale of agricultural produces, he produced previous award of the Reference Court relating to the lands of village Timberva, Tal. Shinor, Dist. Vadodara in support of claim of the claimants for enhanced compensation. On behalf of the state Government, Mr. K.R.Vasava, Special Land Acquisition Officer, was examined at Exh.36. He asserted before the Court that market value of the lands acquired was correctly assessed by the Special Land Acquisition Officer concerned and no case was made out by the claimants for granting them enhanced compensation.

4. On appreciation of evidence adduced by the parties, the learned Judge of the Reference Court came to the conclusion that previous award of the Reference Court relating to the lands of village Timberva was relevant and provided good guidance for the purpose of determining market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has held that the claimants are entitled to additional compensation at the rate

of Rs.20.25 paise per square meter by the impugned judgment and award, which has given rise to the above numbered appeals.

5. This Court has heard Mr. S.S.Shah, learned Government Pleader, Mr. Sudhanshu Patel, learned Assistant Government Pleader for the appellant and Mr. Jay Amin, learned counsel for the claimants in each appeal. This Court has also considered the record and proceedings received by this Court pursuant to the order dated July 26, 2006.

6. From the record of the case it is evident that on behalf of the claimants witness Vinodbhai Leelabhai Patel, who himself was claimant in one of the cases was examined at Exh.14. Though it was asserted by the witness that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural produces, no evidence was produced by him to substantiate the said claim. The claimants did not produce any sale deed for claiming enhanced compensation nor the enhanced compensation was claimed on yield basis. The

witness for the claimants produced previous award of the Reference Court, rendered in Land Reference Case Nos. 421/98 to 433/98, 437/98 to 456/98 relating to the lands of village Timberva at Exh.16. It was asserted by the witness for the claimants that there was common Gram Panchayat for village Vemar and village Timberva and that the boundaries of both the villages were common. It was also asserted by the witness that the lands of village Timberva were similar in all respects to the lands acquired in the instant case from village Vemar and lands of both the villages had same advantages as well as disadvantages. This assertion made by the witness for the claimants could not be demolished during his cross-examination nor any evidence could be produced on the record of the case by Mr. K.R.Vasava, who was examined at Exh.36 to show that the lands of village Vemar and lands of village Timberva were not similar or were not comparable. Under the circumstances, this Court is of the opinion that the Reference Court was justified in placing reliance on the

previous award of the Reference Court relating to the lands of village Timberva for the purpose of determining market value of the lands acquired from village Vemar. It is well settled that previous award of the Reference Court relating to the lands of adjoining village which has attained finality can be relied upon for the purpose of ascertaining market value of the lands acquired from its adjoining village. During the course of hearing of the appeals, Mr. S.S.Patel, learned Assistant Government Pleader has produced simple copy of the judgment dated March 16, 2002, rendered by the Division Bench comprising N.G.Nandi and J.R.Vora, JJ, in First appeal No.1977/2001 to First Appeal No.2009/2001 for perusal of the Court. It indicates that previous award of the Reference Court rendered in Land Reference Case No.421/98 to 433/98, 437/98 to 456/98 was challenged by the Special Land Acquisition Officer in First Appeal No.1977/2001 to 2009/2001 and the High Court had allowed the said appeals partly by holding that the claimants, whose lands, situated in village

Timberva, were acquired, were entitled to compensation in all at the rate of Rs.17/- per square meter. As the previous award of the Reference Court which is relied upon by the Reference Court in the instant case is modified by the High Court, this Court is of the opinion that the compensation payable to the claimants will have to be reduced accordingly and the appeals will have to be allowed in part.

7. For the foregoing reasons, the appeals partly succeed. It is held that the claimants shall be entitled to the compensation at the rate of Rs.17/- per square meter for their lands acquired from village Vemar and not at the rate of Rs.24/- per square meter as held by the Reference Court vide judgment and order dated March 6, 2004, rendered by the learned 8th Joint Civil Judge (S.D.), Vadodara in Land Reference Case No.1133/99 to 1149/99. The rest of the directions given by the learned Judge of the Reference Court are not disturbed and are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no order

as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.PANCHAL, J.)

(SMT. ABHILASHA KUMARI, J.)

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